

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

CHARLES HOOFNAGLE

Plaintiff

v.

Civil Action No: 1:15-CV-00008

SMYTH-WYTHE AIRPORT COMMISSION

Serve: Curtis Pennington

Chairman of the Commission

148 Hiler Bridge Road

Chilhowie, VA 24319

CURTIS PENNINGTON, Chairman

In his official capacity

Serve: 148 Hiler Bridge Road

Chilhowie, VA 24319

WILSON L. LEONARD, Former Chairman

In his individual and official capacities

Serve: 525 Saint James Rd.

Chilhowie, VA 24319

DONALD E. ELMORE, Vice-Chairman

In his individual and official capacities

Serve: 4267 Peppers Ferry Road

Wytheville, VA 24382

JOHN R. BENHAM, Treasurer

In his individual and official capacities

Serve: 5265 Century Ct.

Wytheville, VA 24382

FRANKLIN P. SLAVIN, JR.

In his individual and official capacities

Serve: 690 Old King Road

Rural Retreat, VA 24368

SCOTT FREEMAN)
In his individual and official capacities)
Serve: 840 E. Hungry Mother Dr.)
Marion, VA 24354)
)
MIKE EDWARDS)
In his individual and official capacities)
Serve: 8223 Lee Highway)
Rural Retreat, VA 24368)
)
WILLIAM T. DUNGAN)
In his individual and official capacities)
Serve: 8223 Lee Highway)
Rural Retreat, VA 24368)
)
Defendants)

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

COME NOW, Defendants Wilson L. Leonard, Donald E. Elmore, Franklin P. Slavin, Jr., Scott Freeman, Mike Edwards, and William T. Dungan, by counsel, and in support of their Motion to Dismiss state the following:

1. The Complaint in this case was filed on March 2, 2015.
2. 120 days after that date would be on or about July 2, 2015.
3. This Motion to Dismiss was filed on July 24, 2015, being over 120 days from March 3, 2015.
4. The Complaint on pages 1 and 2 shows addresses for the Defendants making this Motion.
5. No one of these Defendants was personally served at their address or otherwise.

6. Court document 13 filed on June 30, 2015 show “proofs of service” as to each of these Defendants wherein the process server Jeffrey Pike states that he served each of the Summons on Curtis Pennington, Chairman” who is designated by law to accept service of process on behalf of (name of organization) Smyth-Wythe Airport Commission” ...No one of the Defendants making this Motion to Dismiss is an organization. Nor are any of these Defendants the Smyth-Wythe Airport Commission.

7. Consequently, the Defendants making this Motion have not been served process of this Complaint and the time within which to serve process has expired.

For which reasons these Defendants move that the Complaint against them be dismissed.

Wilson L. Leonard, Donald E. Elmore,
Franklin P. Slavin, Jr., Scott Freeman,
Mike Edwards, and William T. Dungan
By Counsel

/s/Henry S. Keuling-Stout
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Co-counsel for Defendants Leonard, Slavin, Dungan

CERTIFICATE OF SERVICE

I, hereby certify that on July 24, 2015 I electronically filed a Memorandum in Support of Motion to Dismiss thereof on behalf of Wilson L. Leonard, Donald E. Elmore, Franklin P. Slavin, Jr., Scott Freeman, Mike Edwards, and William T. Duncan with the Clerk of the court using the CM/ECF system which will send notification of such filing to :

Richard F. Hawkins, III
Virginia Bar Number 4066
THE HAWKINS LAW FIRM, PC
2222 Monument Avenue
Richmond, Virginia 23220
rhawkin@thehawkinslawfirm.net

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